UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

GES EXPOSITION SERVICES, INC.

Employer[1]

and Case 12-RC-9333

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL
#78, LOCAL UNION 73, AFL-CIO

Petitioner Painters

and Case 12-RC-9334

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOTION PICTURE TECHNICIANS, ARTISTS
AND ALLIED CRAFTS OF THE UNITED
STATES, ITS TERRITORIES AND CANADA,
AND ITS LOCAL NO. 835, AFL-CIO, CLC

Petitioner IATSE

and

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, FLORIDA
CARPENTERS REGIONAL COUNCIL,
CARPENTERS AND LATHERS, LOCAL 1765

Intervenor Carpenters

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 385

Intervenor Teamsters

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, GES Exposition Services, Inc., is an official services contactor for trade shows and expositions in Orlando, Florida, and other locations nationwide. The

[1] The names of the Employer, Petitioner Painters, and Petitioner IATSE appear as amended at hearing.

Painters[2] and IATSE[3] filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of employees at the Employer's Orlando, Florida facility and at its show sites. The petitions were consolidated for hearing, and the Painters and IATSE both amended their petitions at hearing. The Carpenters[4] and the Teamsters[5] intervened. A hearing officer of the Board held a hearing,[6] and the Employer, the Painters, IATSE, and the Carpenters filed timely briefs with me.[7]

The parties disagree on one issue: whether an election is barred under the Board's contract bar doctrine. The Employer and the Carpenters contend that an election is barred by a collective-bargaining agreement between them which, on its face, is effective from July 1, 2008,[8] until June 30, 2013. The Teamsters agree that there is a contract bar but wish to intervene if an election is directed. The Painters and IATSE contend that there is no bar.

I have considered the evidence and arguments presented by the parties, and, as discussed below, I have concluded that the agreement between the Employer and the Carpenters does not bar an election for two reasons: first, the agreement does not bar an election under the Board's premature extension doctrine; and second, neither petition is barred because one of the petitions, the Painters' petition, was filed before the effective date of the

[2] International Union of Painters and Allied Trades, District Council #78, Local Union 73, AFL-CIO.

[3] International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, and Its Local No. 835, AFL-CIO, CLC.

[4] United Brotherhood of Carpenters and Joiners of America, Florida Carpenters Regional Council, Carpenters and Lathers, Local 1765.

[5] International Brotherhood of Teamsters, Local Union No. 385.

[6] On August 4, 2008, the Employer filed a motion to correct the hearing transcript. On August 5, 2008, the Carpenters sent me a letter stating that they did not object. The other parties have not responded to the motion. As the corrections sought by the Employer would not materially alter the facts upon which I have relied in making this decision, I will defer ruling on the motion in order to give the parties an opportunity to respond to the Employer's motion. Any response to the Employer's motion to correct the hearing transcript must be filed by August 11, 2008.

[7] The Teamsters did not file a brief.

[8] All dates are in 2008 unless otherwise indicated.

agreement. Accordingly, I have directed an election in the petitioned-for unit.[9] After describing the evidence presented at hearing, I will explain the Board's contract bar doctrine and its application to the facts of this case.

I. FACTS

On February 11, 2000, in Case 12-RC-8371, the Carpenters were certified as the collective-bargaining representative of a unit of employees including the employees in the petitioned-for unit as well as truck drivers employed by the Employer. The Employer and the Carpenters subsequently agreed to remove truck drivers from the unit.[10] The Carpenters were again certified as the representative of the employees in the petitioned-for unit on October 4, 2005, after the Painters, the Teamsters, and the Carpenters petitioned to represent unit employees in Cases 12-RC-9142, 12-RC-9145, and 12-RC-9147.

Since 1996, the Employer and the Carpenters have been parties to successive collective-bargaining agreements, including a collective-bargaining agreement effective on its face from September 26, 2005, until September 25, 2008.[11] The signatures of the Union's executive secretary-treasurer/business manager and the Employer's president on that agreement are dated February 28, 2006, and April 17, 2006, respectively.

In mid-December 2007, the Employer and the Carpenters began negotiating a new agreement. The Employer's vice president of human resources and labor relations, Joseph

[9] The parties stipulated, and I find, that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Robert Redfern, Jeremy Lanier, the GEM shop supervisor, Jim Griffin, the advanced freight warehouse supervisor, Ralph Hickman, Marc Cancel, Doug Coleman, John Ellis, Edwin Belisle, Todd Wallace, Jon Deer, John Wells, Ewell Carter, Jason Stanforth, Doland Austin, Bridget Carter, Quarence Williams, William Koroitamudu, Steve Foster, Shawn Breunle, Eric Birdsell, David Figueroa, Shannan Augsburger, Amy Ellis, Beth Jackson, Carrie Renuart, Keith Kreider, Stephan Dunne, Shelia Orcasio, Tamma Merritt, Laura Robinson, Miiko Belisle, Michael Robbins, Colleen Kise, Ciaran Tully, Sandy Sepulveda, and Sharina Pratt.

[10] See the Regional Director's Decision and Direction of Election in Cases 12-RC-9142, 12-RC-9145, and 12-RC-9147 at fn. 27.

[11] The unit description in the agreement effective from September 26, 2005, until September 25, 2008, is worded differently than the unit description in the most recent certification of the Carpenters and the unit description to which the parties have stipulated in this case. However, those unit descriptions all describe the same employees.

Sangregorio, testified that the negotiations were prompted by a December 2007 call from Thomas Mazziotta, a division manager for the Florida Carpenters Regional Council, to a labor relations director for the Employer in Orlando. According to Sangregorio, Mazziotta told the labor relations director that the Carpenters wanted to discuss reaching either a new agreement or at least an understanding that changes needed to be made to the current agreement. However, Mazziotta was unsure whether he and the labor relations director discussed reopening and modifying the agreement in December 2007, and the labor relations director did not testify.

In any event, the Employer and the Carpenters met for two days in mid-December 2007, two days in February 2008, and at least two more days in spring 2008. The Employer and the Union last met and bargained on May 28, 29, and 30. On May 30, the Employer and the Carpenters reached a "final understanding" or "tentative agreement." At the end of the May 30 meeting, the Employer's vice president of human resources and labor relations, Joseph Sangregorio, asked the members of the Carpenters' bargaining committee if they would recommend the agreement for ratification, and they unanimously agreed to recommend it. The Carpenters' executive secretary-treasurer for the State of Florida, Jerry Rhoades, told Sangregorio that the next step would be to have the agreement ratified. The Employer and the Carpenters agreed that Florida Carpenters Regional Council division manager Mazziotta would "pull together" the tentatively agreed-upon provisions in a document and transmit it to Sangregorio.

Around June 5, Mazziotta sent Sangregorio a document setting forth the agreement reached by the parties. However, the document included errors in wage rates and some grammatical errors.[12] On June 10, Mazziotta emailed Sangregorio a revised "final draft" of the agreement. He copied the Carpenters' Florida executive secretary-treasurer Jerry Rhoades,

[12] The document that Mazziotta sent to Sangregorio around June 5 was not offered into evidence.

national negotiator for the Carpenters' international Ken Viscovich, and senior vice president of the East Region for the Employer Steve Moore on the email. In the email, Mazziotta wrote, "Gentlemen good evening, please find the FINAL for your review." The same day, Sangregorio responded by email, stating, "Please take this e-mail as GES's approval of the attached document reflecting the new terms and conditions of the recently negotiated CBA. Please notify us when this will be ratified by the membership and the results thereof." After receiving Sangregorio's response, Mazziotta handwrote "FINAL" at the top of a printed copy of the response. He wrote "FINAL" as an internal note to indicate that he understood that the email was final and that the attachment "was also to be considered the final piece." Sangregorio wrote "Approved" at the top of a printed copy of the revised final draft of the agreement and initialed the document and dated it "6/10/08."

On June 20, the Carpenters notified the Employer that the agreement had been ratified.[13] A clean copy of the new agreement was then physically circulated to three Carpenters representatives (whose offices were in Orlando, Miami, and California) and an Employer representative (whose office was in Las Vegas) for signature. The agreement circulated for signature was identical to the one that Mazziotta emailed to Sangregorio on June 10, except the cover no longer said, "FINAL DRAFT/ REVISION # 2/ 6/10/08" on it. The Carpenters representatives and Employer representative whose signatures appear on the agreement did not testify.[14] However, their signatures on the agreement are dated as follows: the signature of Ken Viscovich, national negotiator for the Carpenters' international, is dated

[13] In an offer of proof, Counsel for IATSE stated that if Mazziotta had been permitted to testify further regarding the ratification vote, he would have testified that the Carpenters ruled certain individuals ineligible to participate in the vote and that the participation of those individuals could have affected the results. According to Florida Carpenters Regional Council division manager Mazziotta, under their by-laws, the Carpenters could have entered into the agreement even if the membership voted against ratification. The Carpenters' by-laws were not offered into evidence. As explained below in the Analysis section, I find it unnecessary to reach the issue of whether or not the contract was properly ratified.

[14] Florida Carpenters Regional Council division manager Mazziotta believed that he saw Brian Fox, a council representative for the Carpenters, sign the agreement.

June 26; the signature of Brian Fox, a council representative for the Carpenters, is dated July 3; the signature of Jerry Rhoades, the Carpenters' executive secretary-treasurer for the State of Florida, is dated July 7; and the signature of Anne Hanson, executive vice president of human resources and labor relations for the Employer, is dated July 7.[15]

The preamble of the agreement states that the Employer and the Carpenters entered into the agreement on July 1, 2008, and the duration clause states that the agreement is effective for five years, from July 1, 2008, until June 30, 2013. The agreement includes provisions relating to the unit employees' terms and conditions of employment, including but not limited to hiring, wages, benefits, hours of work, leaves of absence, discipline and discharge, holidays, working conditions, and discrimination.[16]

The Painters petitioned to represent the unit employees on June 30, and IATSE petitioned to represent them on July 1. Thus, the Painters filed their petition one day before the agreement's effective date of July 1, and IATSE filed its petition on the effective date. Both the Painters and IATSE filed their petitions after Employer vice president of human resources and labor relations Sangregorio initialed the agreement and after Carpenters national negotiator Viscovich signed it but before Carpenters council representative Fox, Carpenters Florida executive secretary-treasurer Rhoades, and Employer executive vice president of human resources and labor relations Hanson signed it.

II. ANALYSIS

As explained in detail below, I find that the petitions filed by the Painters and IATSE were timely filed because the agreement that became effective July 1 was a premature

[15] Employer vice president of human resources and labor relations Sangregorio testified that per Employer protocol, the Employer's president or a designee signs collective-bargaining agreements for the Employer, and Hanson signed the agreement as the designee of the president.

[16] Like the unit description in the agreement effective from September 26, 2005, until September 25, 2008, the unit description in the new agreement is worded differently than the unit description in the most recent certification of the Carpenters and the unit description to which the parties have stipulated in this case. However, those unit descriptions all describe the same employees.

extension of the previous agreement between the Employer and the Carpenters and because the Painters' petition was filed before the July 1 effective date of the new agreement. Below, I will describe the relevant precedent and its application to the facts of this case.

The burden of proving that a contract bars an election rests on the party asserting the bar. *Roosevelt Memorial Park*, 187 NLRB 517 (1970). When the term of a contract between an employer and an incumbent union is three years or less, a rival petition is timely when it is filed during the "open period" more than 60 days but less than 90 days before the termination date of the contact.[17] *Leonard Wholesale Meats Co.*, 136 NLRB 1000 (1962). In applying the contract bar doctrine, a contract effective "to" or "until" a certain date does not include that date, and the contract's last effective date is the preceding day, in the absence of a specific expression to the contrary. *Hemisphere Steel Products*, 131 NLRB 56 (1961); *Williams Laundry Co.*, 97 NLRB 995 (1952).

When during the term of an existing contract the parties to that contract execute an amendment or a new contract with a later termination date, the Board will deem the contract to be prematurely extended. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001-02 (1952). The Board will deem such a contract to be prematurely extended even if the premature extension is embodied in an entirely separate agreement with new collective bargaining provisions. *Auburn Rubber*, 140 NLRB 919 (1963); *Stubnitz Greene Corp.*, 116 NLRB 965 (1957). When a premature extension occurs, a rival petition is still timely if it is filed during the open period more than 60 days but less than 90 days before the termination date of the original contract, if term of the original contract is three years or less. *Hertz Corp.*, 265 NLRB 1127 (1982); *New England Telephone Co.*, 179 NLRB 53 (1969).

Further, a contract does not bar an election if a petition is filed with the Board before the effective date of the contract, when the contract is effective at some time after its execution.

[17] The timeframe is different for employers in the health care industry and those with seasonal operations.

National Broadcasting Company, Inc., 104 NLRB 587 (1953). When one petition is timely filed under the contract bar doctrine, the Board has determined that a second petition filed during the pendency of the question concerning representation raised by the first petition will not be subject to a contract bar. *Weather Vane Outerwear Corp.*, 233 NLRB 414 (1977).

Applying the principles set forth above, the petitions filed by the Carpenters and IATSE were both timely. The Employer and the incumbent Carpenters were parties to a three-year contract effective "until" September 25. Thus, the last effective date of the contract for contract-bar purposes was September 24. During the term of the existing contract, the Employer and the Carpenters entered into a new contract with a later termination date: the new contract was effective until June 30, 2013. Thus, the new contract was a premature extension. Rival petitions filed more than 60 days but less than 90 days before September 24, the last effective date of the original contract, (i.e., between June 27 and July 26) would be timely under the Board's premature extension doctrine. The petitions filed by the Painters and IATSE on June 30 and July 1 respectively were therefore timely filed, and there is no contract bar to an election.

In their briefs, the Employer and the Carpenters both highlight the Board's discretion to waive application of its contract bar and premature extension doctrines. I find that there is no basis for me to waive application of those doctrines, as their application here strikes the proper balance between promoting industrial stability and "protect[ing] petitioners in general from being faced with prematurely executed contracts at a time when [they] would normally be permitted to file a petition." *H.L. Klion, Inc.*, 148 NLRB 656 (1964).

The Employer also argues that this case is analogous to *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958 (1982), in which the Board determined that there was a contract bar. *Shen-Valley* is distinguishable. In that case, the employer and incumbent union were parties to a five-year contract. *Id.* at 958. Soon after the end of the second year of the contract, they agreed to

an "amendment" containing various provisions organized in the same fashion as the provisions of the original contract. *Id.* Slightly more than three years after the original contract became effective, a rival union petitioned to represent the employees. *Id.* The Board found that the petition was barred by the amendment, which "reaffirmed" the original contract and was a premature extension. *Id.* at 958-60. The Board reasoned that because the amendment reaffirmed the original long-term five-year contract, "it bar[red] any petition filed *after the third anniversary of the original contract*—subject to the open period from 60 to 90 days prior to its expiration." *Id.* at 960 (emphasis added). Significantly, the Board noted, "The premature extension doctrine does not operate to remove the [amendment] as a bar here, as the petition was not filed in the open period relative to the third anniversary date of the long-term contract." *Id.* at 959, fn. 5. When a rival petition is filed within the open period relative to the third anniversary date of the original long-term contract in such circumstances, the Board will find that the petition is not barred. See *M.C.P. Foods*, 311 NLRB 1159 (1993). Here, unlike in *Shen-Valley*, the original contract between the Employer and the incumbent Carpenters was not a long-term contract: rather, it was a three-year contract with a fixed term of "reasonable duration." Further, the rival petitions at issue here were filed within the open period relative to the expiration date of the original contract. The premature extension doctrine squarely applies here, and nothing in *Shen-Valley* justifies a finding to the contrary.

Moreover, the Painters' petition, filed on June 30, was filed before the July 1 effective date of the new contract between the Employer and the Carpenters. Therefore, even assuming for the sake of argument that the agreement was "signed" before June 30, that ratification was not a condition precedent to the agreement, that in any event the agreement was properly ratified on June 19, and that the absence of a notice to forestall automatic renewal of the

previous agreement did not remove any contract bar, the Painters' petition was timely filed.[18] Because IATSE's petition was filed while the Painters' petition was still pending, IATSE's petition would not be subject to a contract bar, even if the premature extension doctrine did not render IATSE's petition timely.

Accordingly, I find that there is no contract bar to an election, and I am directing an election in the petitioned-for unit.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.[19]

3. The Painters, IATSE, the Carpenters, and the Teamsters claim to represent certain employees of the Employer.[20]

[18] In their briefs, the Painters and IATSE argued that the agreement was not "signed by all parties" within the meaning of Board precedent before the petitions were filed; IATSE argued that ratification was a condition precedent to the agreement and that the evidence would have demonstrated that the Carpenters ruled a determinative number of individuals ineligible to participate in the ratification vote if the hearing officer had allowed further questioning regarding that matter; and the Painters and IATSE argued that the absence of a notice to forestall automatic renewal of the previous agreement rendered both agreements insufficient to bar an election. I find it unnecessary to resolve each of these issues because, as stated above, even resolving all of these issues in favor of the Employer and the Carpenters, there is still no contract bar.

[19] The parties stipulated that the Employer is a Nevada corporation with an office and place of business located at 4805 Sand Lake Road, Orlando, Florida, where it is engaged in the business of managing and operating convention and trade show services. During the past 12 months, in conducting its business operations described above, the Employer derived gross revenues valued in excess of $500,000 and purchased and received at its Orlando, Florida facility goods valued in excess of $50,000 directly from points located outside the State of Florida.

[20] The parties stipulated, and I find, that the Painters, IATSE, the Carpenters, and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:[21]

Included:

All regular part-time and casual forklift operators and freight handlers, carpentry shop employees, carpet shop employees, drapery shop employees, GEM shop employees, marshalling department employees, dispatch and receiving department employees, warehouse freight handlers and employees performing the duties of association freight work, loading and unloading of all pre-assembled GEM and handling of empty containers employed by the Employer at its Orlando, Florida facility and its show sites.

Excluded:

Regular full-time employees of the Employer (defined to include those receiving or eligible to receive or participate in the Employer's Benefit Plans), employees who regularly perform work within the bargaining units represented by IATSE and the IBEW, truck drivers, office clerical employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on whether or not they wish to be represented for purposes of collective bargaining by: (1) International Union of Painters and Allied Trades, District Council #78, Local Union 73, AFL-CIO; (2) International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, and Its Local No. 835, AFL-CIO, CLC; (3) United Brotherhood of Carpenters and Joiners of America, Florida Carpenters Regional Council, Carpenters and Lathers, Local 1765; or (4) International Brotherhood of Teamsters, Local Union

[21] The parties stipulated to the unit description and to the voting eligibility formula. They agreed that a casual employee in a job classification included in the bargaining unit is eligible to vote if the individual worked an average of 4 hours per week during the 13 week period ending on June 30, 2008, has not been discharged for cause, and has not voluntarily quit.

No. 385. The arrangements for conducting the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are regular part-time employees and casual employees who worked an average of 4 hours per week during the 13 week period ending on June 30, 2008, in job classifications included in the bargaining unit, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names

and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824, on or before August 13, 2008. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (813) 228-2874 or electronically. (Please see www.nlrb.gov for information about electronic filing.) Since the list will be made available to all parties to the election, please furnish a total of **five** copies, unless the list is submitted by facsimile or electronically, in which case only one need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). An employer who fails to do so may not file objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on August 20, 2008. The request may not be filed by facsimile.[22]

Dated at Tampa, Florida this 6th day of August, 2008.

/s/[Rochelle Kentov]

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, FL 33602

[22] A request for review may also be submitted by electronic filing. See the attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website.